

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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*An Act to amend and reenact §§ 2.2-3705.6, 15.2-2160, 56-265.4:4, 56-466.1, and 56-502 of the Code of Virginia, to amend the Code of Virginia by adding in Chapter 21 of Title 15.2 an article numbered 1.2, consisting of sections numbered 15.2-2108.19 through 15.2-2108.31, and to repeal § 15.2-2108 of the Code of Virginia, relating to licensing and regulation of cable television systems.*

[H 1404]

Approved

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-3705.6, 15.2-2160, 56-265.4:4, 56-466.1, and 56-502 of the Code of Virginia are amended and reenacted, that the Code of Virginia is amended by adding in Chapter 21 of Title 15.2 an article numbered 1.2, consisting of sections numbered 15.2-2108.19 through 15.2-2108.31, as follows:**

- § 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.  
The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:
  1. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4 or 62.1-134.1.
  2. Financial statements not publicly available filed with applications for industrial development financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.
  3. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of confidentiality from the Department of Business Assistance, the Virginia Economic Development Partnership, the Virginia Tourism Authority, or local or regional industrial or economic development authorities or organizations, used by the Department, the Partnership, the Authority, or such entities for business, trade and tourism development; and memoranda, working papers or other records related to businesses that are considering locating or expanding in Virginia, prepared by such entities, where competition or bargaining is involved and where, if such records are made public, the financial interest of the governmental unit would be adversely affected.
  4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.
  5. Fisheries data that would permit identification of any person or vessel, except when required by court order as specified in § 28.2-204.
  6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration.
  7. Confidential proprietary records related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.
  8. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.
  9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exemption provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.
  10. Confidential information designated as provided in subsection D of § 2.2-4342 as trade secrets or proprietary information by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

58 11. Confidential proprietary records that are voluntarily provided by a private entity pursuant to a  
 59 proposal filed with a public entity or an affected local jurisdiction under the Public-Private  
 60 Transportation Act of 1995 (§ 56-556 et seq.) or the Public-Private Education Facilities and  
 61 Infrastructure Act of 2002 (§ 56-575.1 et seq.), pursuant to a promise of confidentiality from the  
 62 responsible public entity or affected local jurisdiction, used by the responsible public entity or affected  
 63 local jurisdiction for purposes related to the development of a qualifying transportation facility or  
 64 qualifying project; and memoranda, working papers or other records related to proposals filed under the  
 65 Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure  
 66 Act of 2002, where, if such records were made public, the financial interest of the public or private  
 67 entity involved with such proposal or the process of competition or bargaining would be adversely  
 68 affected. In order for confidential proprietary information to be excluded from the provisions of this  
 69 chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other materials  
 70 for which protection from disclosure is sought, (ii) identify the data or other materials for which  
 71 protection is sought, and (iii) state the reasons why protection is necessary. For the purposes of this  
 72 subdivision, the terms "affected local jurisdiction," "public entity" and "private entity" shall be defined  
 73 as they are defined in the Public-Private Transportation Act of 1995 or in the Public-Private Education  
 74 Facilities and Infrastructure Act of 2002. However, nothing in this subdivision shall be construed to  
 75 prohibit the release of procurement records as required by § 56-573.1 or 56-575.16. Procurement records  
 76 shall not be interpreted to include proprietary, commercial or financial information, balance sheets,  
 77 financial statements, or trade secrets that may be provided by the private entity as evidence of its  
 78 qualifications.

79 12. Confidential proprietary information or trade secrets, not publicly available, provided by a private  
 80 person or entity to the Virginia Resources Authority or to a fund administered in connection with  
 81 financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such  
 82 information were made public, the financial interest of the private person or entity would be adversely  
 83 affected, and, after June 30, 1997, where such information was provided pursuant to a promise of  
 84 confidentiality.

85 13. Confidential proprietary records that are provided by a franchisee under § 15.2-2108 *Article 1.2*  
 86 (*§ 15.2-2108.19 et seq.*) of Chapter 21 of Title 15.2 of the Code of Virginia, to its franchising authority  
 87 pursuant to a promise of confidentiality from the franchising authority that relates to the franchisee's  
 88 potential provision of new services, adoption of new technologies or implementation of improvements,  
 89 where such new services, technologies or improvements have not been implemented by the franchisee on  
 90 a nonexperimental scale in the franchise area, and where, if such records were made public, the  
 91 competitive advantage or financial interests of the franchisee would be adversely affected. In order for  
 92 confidential proprietary information to be excluded from the provisions of this chapter, the franchisee  
 93 shall (i) invoke such exclusion upon submission of the data or other materials for which protection from  
 94 disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state  
 95 the reason why protection is necessary.

96 14. Documents and other information of a proprietary nature furnished by a supplier of charitable  
 97 gaming supplies to the Department of Charitable Gaming pursuant to subsection E of § 18.2-340.34.

98 15. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple  
 99 Board pursuant to §§ 3.1-622 and 3.1-624.

100 16. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of Title 59.1,  
 101 submitted by CMRS providers as defined in § 56-484.12 to the Wireless Carrier E-911 Cost Recovery  
 102 Subcommittee created pursuant to § 56-484.15, relating to the provision of wireless E-911 service.

103 17. Records submitted as a grant application, or accompanying a grant application, to the  
 104 Commonwealth Health Research Board pursuant to Chapter 22 (§ 23-277 et seq.) of Title 23 to the  
 105 extent such records contain proprietary business or research-related information produced or collected by  
 106 the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific,  
 107 technical or scholarly issues, when such information has not been publicly released, published,  
 108 copyrighted or patented, if the disclosure of such information would be harmful to the competitive  
 109 position of the applicant.

110 18. Confidential proprietary records and trade secrets developed and held by a local public body (i)  
 111 providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television  
 112 services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2, to the extent that  
 113 disclosure of such records would be harmful to the competitive position of the locality. In order for  
 114 confidential proprietary information or trade secrets to be excluded from the provisions of this chapter,  
 115 the locality in writing shall (i) invoke the protections of this subdivision, (ii) identify with specificity the  
 116 records or portions thereof for which protection is sought, and (iii) state the reasons why protection is  
 117 necessary.

118 19. Confidential proprietary records and trade secrets developed by or for a local authority created in

119 accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to provide  
120 qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of  
121 Title 56, where disclosure of such information would be harmful to the competitive position of the  
122 authority, except that records required to be maintained in accordance with § 15.2-2160 shall be  
123 released.

124 *Article 1.2.*

125 *Licensing and Regulation of Cable Television Systems.*

126 § 15.2-2108.19. *Definitions.*

127 *As used in this article:*

128 *"Act" means the Communications Act of 1934.*

129 *"Affiliate", in relation to any person, means another person who owns or controls, is owned or*  
130 *controlled by, or is under common ownership or control with, such person.*

131 *"Basic service tier" means the service tier that includes (i) the retransmission of local television*  
132 *broadcast channels and (ii) public, educational, and governmental channels required to be carried in*  
133 *the basic tier.*

134 *"Cable operator" means any person or group of persons that (i) provides cable service over a cable*  
135 *system and directly or through one or more affiliates owns a significant interest in such cable system or*  
136 *(ii) otherwise controls or is responsible for, through any arrangement, the management and operation of*  
137 *a cable system. Cable operator does not include a provider of wireless or direct-to-home satellite*  
138 *transmission service.*

139 *"Cable service" means the one-way transmission to subscribers of (i) video programming or (ii)*  
140 *other programming service, and subscriber interaction, if any, which is required for the selection or use*  
141 *of such video programming or other programming service. Cable service does not include any video*  
142 *programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d).*

143 *"Cable system" or "cable television system" means any facility consisting of a set of closed*  
144 *transmission paths and associated signal generation, reception, and control equipment that is designed*  
145 *to provide cable service that includes video programming and that is provided to multiple subscribers*  
146 *within a community, except that such definition shall not include (i) a system that serves fewer than 20*  
147 *subscribers; (ii) a facility that serves only to retransmit the television signals of one or more television*  
148 *broadcast stations; (iii) a facility that serves only subscribers without using any public right-of-way; (iv)*  
149 *a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the*  
150 *Communications Act of 1934, 47 U.S.C. § 201 et seq., except that such facility shall be considered a*  
151 *cable system to the extent such facility is used in the transmission of video programming directly to*  
152 *subscribers, unless the extent of such use is solely to provide interactive on-demand services; (v) any*  
153 *facilities of any electric utility used solely for operating its electric systems; (vi) any portion of a system*  
154 *that serves fewer than 50 subscribers in any locality, where such portion is a part of a larger system*  
155 *franchised in an adjacent locality; or (vii) an open video system that complies with § 653 of Title VI of*  
156 *the Communications Act of 1934, as amended, 47 U.S.C. § 573.*

157 *"Certificated provider of telecommunications services" means a person holding a certificate issued by*  
158 *the State Corporation Commission to provide local exchange telephone service.*

159 *"Franchise" means an initial authorization, or renewal thereof, issued by a franchising authority,*  
160 *including a locality or the Commonwealth Transportation Board, whether such authorization is*  
161 *designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that*  
162 *authorizes the construction or operation of a cable system, a telecommunications system, or other*  
163 *facility in the public rights-of-way. A negotiated cable franchise is granted by a locality after*  
164 *negotiation with an applicant pursuant to § 15.2-2108.20. An ordinance cable franchise is granted by a*  
165 *locality when an applicant provides notice pursuant to § 15.2-2108.21 that it will provide cable service*  
166 *in the locality.*

167 *"Force majeure" means an event or events reasonably beyond the ability of cable operator to*  
168 *anticipate and control. "Force majeure" includes, but is not limited to, acts of God, incidences of*  
169 *terrorism, war or riots, labor strikes or civil disturbances, floods, earthquakes, fire, explosions,*  
170 *epidemics, hurricanes, tornadoes, governmental actions and restrictions, work delays caused by waiting*  
171 *for utility providers to service or monitor or provide access to utility poles to which cable operator's*  
172 *facilities are attached or to be attached or conduits in which cable operator's facilities are located or to*  
173 *be located, and unavailability of materials or qualified labor to perform the work necessary.*

174 *"Gross revenue" means all revenue, as determined in accordance with generally accepted accounting*  
175 *principles, that is actually received by the cable operator and derived from the operation of the cable*  
176 *system to provide cable services in the franchise area; however, in an ordinance cable franchise "gross*  
177 *revenue" shall not include: (i) refunds or rebates made to subscribers or other third parties; (ii) any*  
178 *revenue which is received from the sale of merchandise over home shopping channels carried on the*  
179 *cable system, but not including revenue received from home shopping channels for the use of the cable*

180 service to sell merchandise; (iii) any tax, fee, or charge collected by the cable operator and remitted to  
 181 a governmental entity or its agent or designee, including without limitation a local public access or  
 182 education group; (iv) program launch fees; (v) directory or Internet advertising revenue including, but  
 183 not limited to, yellow page, white page, banner advertisement, and electronic publishing; (vi) a sale of  
 184 cable service for resale or for use as a component part of or for the integration into cable services to  
 185 be resold in the ordinary course of business, when the reseller is required to pay or collect franchise  
 186 fees or similar fees on the resale of the cable service; (vii) revenues received by any affiliate or any  
 187 other person in exchange for supplying goods or services used by the cable operator to provide cable  
 188 service; and (viii) revenue derived from services classified as noncable services under federal law,  
 189 including, without limitation, revenue derived from telecommunications services and information  
 190 services, and any other revenues attributed by the cable operator to noncable services in accordance  
 191 with rules, regulations, standards, or orders of the Federal Communications Commission.

192 "Interactive on-demand services" means a service providing video programming to subscribers over  
 193 switched networks on an on-demand, point-to-point basis, but does not include services providing video  
 194 programming prescheduled by the programming provider.

195 "Ordinance" includes a resolution.

196 "Transfer" means any transaction in which (i) an ownership or other interest in the cable operator is  
 197 transferred, directly or indirectly, from one person or group of persons to another person or group of  
 198 persons, so that majority control of the cable operator is transferred; or (ii) the rights and obligations  
 199 held by the cable operator under the cable franchise granted under this article are transferred or  
 200 assigned to another person or group of persons. However, notwithstanding clauses (i) and (ii) of the  
 201 preceding sentence, a transfer of the cable franchise shall not include (a) transfer of an ownership or  
 202 other interest in the cable operator to the parent of the cable operator or to another affiliate of the  
 203 cable operator; (b) transfer of an interest in the cable franchise granted under this article or the rights  
 204 held by the cable operator under the cable franchise granted under this article to the parent of the  
 205 cable operator or to another affiliate of the cable operator; (c) any action that is the result of a merger  
 206 of the parent of the cable operator; (d) any action that is the result of a merger of another affiliate of  
 207 the cable operator; or (e) a transfer in trust, by mortgage, or by assignment of any rights, title, or  
 208 interest of the cable operator in the cable franchise or the system used to provide cable in order to  
 209 secure indebtedness.

210 "Video programming" means programming provided by, or generally considered comparable to,  
 211 programming provided by a television broadcast station.

212 All terms used herein, unless otherwise defined, shall have the same meaning as set forth in Title VI  
 213 of the Communications Act of 1934, 47 U.S.C. § 521 *et seq.* In addition, references in this article to any  
 214 federal law shall include amendments thereto as are enacted from time-to-time.

215 § 15.2-2108.20. Authority to grant negotiated cable franchises and regulate cable systems.

216 A. A locality may grant a negotiated cable franchise in accordance with Title VI of the  
 217 Communications Act of 1934, as amended, 47 U.S.C. § 521 *et seq.*, and this chapter.

218 B. A locality may, by ordinance, exercise all regulatory powers over cable systems granted by the  
 219 Communications Act of 1934, except as limited by this article. These regulatory powers shall include the  
 220 authority: (i) to enforce customer service standards in accordance with the Act; (ii) to enforce more  
 221 stringent standards as agreed upon by the cable operator through the terms of a negotiated cable  
 222 franchise; and (iii) to regulate the rates for basic cable service in accordance with the Act. A locality,  
 223 however, shall not regulate cable operators, cable systems, or other facilities used to provide video  
 224 programming through the adoption of ordinances or regulations (a) that are more onerous than  
 225 ordinances or regulations adopted for existing cable operators; (b) that unreasonably prejudice or  
 226 disadvantage any cable operator, whether existing or new; or (c) that are inconsistent with any  
 227 provision of federal law or this article.

228 § 15.2-2108.21. Ordinance cable franchises.

229 A. This section shall govern the procedures by which a locality may grant ordinance cable  
 230 franchises.

231 B. An ordinance cable franchise, which shall have a term of 15 years, may be requested by (i) a  
 232 certificated provider of telecommunications services with previous consent to use the public  
 233 rights-of-way in a locality through a franchise; (ii) a certificated provider of telecommunications  
 234 services that lacked previous consent to provide cable service in a locality but provided  
 235 telecommunications services over facilities leased from an entity having previous consent to use of the  
 236 public rights-of-way in such locality through a franchise; or (iii) a cable operator with previous consent  
 237 to use the public rights-of-way to provide cable service in a locality through a franchise and who seeks  
 238 to renew its existing cable franchise pursuant to § 15.2-2108.30 as an ordinance cable franchise. A  
 239 cable operator with previous consent to use the public rights-of-way to provide cable service in a  
 240 locality through a franchise may opt into the new terms of an ordinance cable franchise under

241 § 15.2-2108.26.

242 C. In order to obtain an ordinance cable franchise, an applicant shall first file with the chief  
 243 administrative officer of the locality from which it seeks to receive such ordinance cable franchise a  
 244 request to negotiate the terms and conditions of a negotiated cable franchise under § 15.2-2108.20. An  
 245 applicant shall request and make itself available to participate in cable franchise negotiations with the  
 246 locality from which it seeks to receive negotiated cable franchise at least 45 calendar days prior to  
 247 filing a notice electing an ordinance cable franchise; this prerequisite shall not be applicable if a  
 248 locality refuses to engage in negotiations at the request of an applicant or if the applicant already holds  
 249 a negotiated cable franchise from the locality. Thereafter, an applicant, through its president or chief  
 250 executive officer, shall file notice with the locality that it elects to receive an ordinance cable franchise  
 251 at least 30 days prior to offering cable in such locality. The notice shall be accompanied by a map or a  
 252 boundary description showing (i) the initial service area in which the cable operator intends to provide  
 253 cable service in the locality within the three-year period required for an initial service area and (ii) the  
 254 area in the locality in which the cable operator has its telephone facilities. The map or boundary  
 255 description of the initial service areas may be amended by the cable operator by filing with the locality  
 256 a new map or boundary description of the initial service area.

257 D. The cable operator shall assure that access to cable services is not denied to any group of  
 258 potential residential cable subscribers because of the income of the residents of the local area in which  
 259 such group resides. The local franchising authority shall have the right to monitor and inspect the  
 260 deployment of cable services and the cable operator shall submit semiannual progress reports detailing  
 261 the current provision of cable services in accordance with the deployment schedule and its new service  
 262 area plans for the next six months. The failure to correct or remedy any material deficiencies shall be  
 263 subject to the same remedies as contained in the cable television franchise of the existing cable operator  
 264 as that franchise existed at the time of the grant of the ordinance franchise.

265 E. The locality from which the applicant seeks to receive an ordinance cable franchise shall adopt  
 266 any ordinance requiring adoption under this article within 120 days of the applicant filing the notice  
 267 required in subsection C. Any ordinance adopted under this section that relates to a cable operator's  
 268 provision of cable service shall apply to such cable operator retroactively to the date on which the  
 269 cable operator began to offer cable service in the locality pursuant to this article.

270 F. Notice of any ordinance that requires a public hearing shall be advertised once a week for two  
 271 successive weeks in a newspaper having general circulation in the locality. The advertisement shall  
 272 include a statement that a copy of the full text of the ordinance is on file in the office of the clerk of the  
 273 locality. All costs of such advertising shall be assessed against the operator or applicant.

274 G. If the governing body of any town adopts an ordinance pursuant to the provisions of this article,  
 275 such town shall not be subject to any ordinance adopted by the county within which such town lies.

276 § 15.2-2108.22. Regulation of fees, rates and services; penalties.

277 Upon receiving a notice requesting an ordinance cable franchise pursuant to § 15.2-2108.21, a  
 278 locality shall adopt or maintain one or more ordinances that govern a cable operator who provides  
 279 cable service under an ordinance cable franchise. The requirements of any specific provision in any  
 280 such ordinance shall not exceed the requirements imposed in the same provision, if any, in any existing  
 281 cable franchise within the locality. Such ordinance or ordinances, which shall be adopted after a public  
 282 hearing, shall:

283 1. Require a cable operator to provide the locality with access to a number of public, educational,  
 284 and governmental access channels, equal to the lowest number of such channels provided by any other  
 285 cable operator in the same franchise area of the locality. If the existing cable operator provides less  
 286 than three such public, educational, and governmental access channels pursuant to a franchise  
 287 agreement, the locality may require each cable operator to provide up to three such channels. Any  
 288 additional channels provided subject to this provision shall be subject to the reclamation formula set  
 289 forth below. In addition, a locality may, by ordinance adopted after a public hearing, require a cable  
 290 operator to interconnect with any other cable operator to ensure the carriage of required public,  
 291 educational, and governmental access channels; if the new cable operator and all existing cable  
 292 operators cannot agree to an interconnection agreement within 180 days of a request to interconnect by  
 293 the new cable operator, then the locality is authorized to determine an interconnection point. The  
 294 locality or its designee shall assume responsibility for management, operation, and programming of such  
 295 channels. A locality that substantially utilizes its existing public, educational, and governmental access  
 296 channels may require a reasonable number of additional public, educational, and governmental access  
 297 channels by the enactment of an ordinance, after a public hearing, so long as (i) the ordinance applies  
 298 equally to all providers of cable service within a franchise area, (ii) the total number of additional  
 299 public, educational, and governmental access channels does not exceed three channels in the basic  
 300 service tier, and (iii) the total number of public, educational, and governmental access channels shall  
 301 not exceed seven channels in the aggregate. Notwithstanding the foregoing, but consistent with federal

302 law, the locality and a cable operator may enter into written agreements for the carriage of additional  
303 public, educational, and governmental access channels, including other arrangements for the carriage of  
304 such programming. Any additional public, educational, and governmental access channel provided  
305 pursuant to this article that is not utilized by the locality for at least eight hours a day shall no longer  
306 be made available to the locality, but may be programmed at the cable operator's discretion. At such  
307 time as the locality can certify to the cable operator a schedule for at least eight hours of daily  
308 programming for a period of three months, the cable operator shall restore the previously re-allocated  
309 channel. For purposes of this subdivision, a public, educational, and governmental access channel shall  
310 be considered to be substantially utilized when 12 hours are programmed on that channel each calendar  
311 day; in addition, at least 33% of the 12 hours of programming for each business day on average over  
312 each calendar quarter must be nonrepeat programming. For purposes of this subdivision, nonrepeat  
313 programming shall include the first three videocastings of a program and shall include programming on  
314 other public, educational, and governmental access channels in that locality. Programming for purposes  
315 of determining substantial utilization shall not include an alphanumeric scroll, except that for purposes  
316 of requiring one or more additional public, educational, and governmental access channels, an  
317 alphanumeric scroll shall be included as programming on not more than one channel;

318 2. Require a cable operator to pay a franchise fee, remitted on the same schedule as the least  
319 frequent schedule of an existing cable operator, but no more frequently than quarterly, calculated by  
320 multiplying a franchise fee percentage rate by the cable operator's gross revenues in such franchise  
321 area for the remittance period; however, the franchise fee rate shall (i) not exceed 5% of such gross  
322 revenues and (ii) not exceed the lowest franchise fee rate paid or provided by an existing cable operator  
323 in the locality. The locality may further require that the cable operator make the franchise fee payments  
324 to the locality no later than 45 days following the end of the remittance period and require that the  
325 franchise fee payment be submitted with a brief report prepared by a duly authorized representative of  
326 the cable operator showing the basis for the computation. The locality shall have the right to reasonably  
327 require further supporting information that does not exceed the information required to be provided by  
328 existing cable operators in the locality;

329 3. Require a cable operator to pay a recurring fee, hereafter referred to as the PEG Capital Fee, to  
330 support the capital costs of public, educational, and governmental channel facilities, including  
331 institutional networks, provided that the PEG Capital Fee is equal to the lowest recurring fee imposed  
332 on a per subscriber or a percentage of gross revenue basis and paid by any existing cable operator in  
333 the locality to support the capital costs of such facilities. The PEG Capital fee shall only be imposed on  
334 a per subscriber or a percentage of gross revenue basis. If the existing cable operator has paid a lump  
335 sum capital grant at award or renewal of its current franchise, or is providing in-kind equipment in lieu  
336 of such a capital grant, to support public, educational, and governmental channel facilities, including  
337 institutional networks, the locality, by ordinance adopted after a public hearing, shall also impose an  
338 additional monthly recurring fee to be known as the PEG Capital Grant Surcharge Fee on the new  
339 cable operator equal to the lower of (i) 1.5% of the new cable operator's gross revenues derived from  
340 the operation of its cable system in that locality or (ii) the lowest amount of capital contribution paid or  
341 provided in-kind, as shown on the books of the cable operator, by an existing cable operator in the  
342 locality (a) when such capital contribution is amortized over the term of the existing cable operator's  
343 franchise and (b) divided by the number of subscribers or annual gross revenue of the existing cable  
344 operator as shown on its most recent report to the locality, depending on recovery methodology chosen  
345 by the locality. Both the PEG Capital Fee and the PEG Capital Grant Surcharge Fee may only be  
346 collected by the locality for the remainder of the shortest remaining franchise term of any existing cable  
347 operator in the locality; however, at the end of such term the locality may negotiate with all cable  
348 operators to set a new, recurring fee to support the reasonable and necessary capital costs of public,  
349 educational, and governmental channel facilities, including institutional networks, that shall be imposed  
350 on all cable operators such that the fee applies equally to all of the customers of all cable operators in  
351 the locality. At the end of such term, no cable operator shall be required to provide any further in-kind  
352 public, educational, and governmental access channels, including institutional network, support. If the  
353 cable operators and the locality cannot agree on such a recurring capital cost fee, the locality, by  
354 ordinance adopted after a public hearing, may impose a recurring fee, calculated on a per subscriber or  
355 percentage of gross revenue basis, to support the reasonable and necessary capital costs of public,  
356 educational, and governmental channel facilities, including institutional networks; however, such fee may  
357 not exceed the PEG Capital Fee previously imposed on cable operators by the locality. Any and all fees  
358 permitted under this subdivision shall be paid by the cable operator to the locality on the same schedule  
359 as franchise fees are paid. Nothing in this subdivision shall be construed to permit a locality to require  
360 cable operators to pay capital grants at the time of the grant or renewal of a franchise or otherwise  
361 except for the PEG Capital Grant Surcharge Fee specifically provided in this subdivision;

362 4. Require a cable operator to comply with the customer service requirements imposed by the

363 locality pursuant to 47 U.S.C. § 552(a)(1) and this article through the adoption of an ordinance after a  
 364 public hearing. Any customer service requirements imposed by the locality that exceed the requirements  
 365 established by the Federal Communications Commission under 47 U.S.C. § 552(b) shall (i) not be  
 366 designed so that the cable operator cannot also comply with any other customer service requirements  
 367 under state or federal law or regulation applicable to the cable operator in its provision of other  
 368 services over the same network used to provide cable service, (ii) be no more stringent than the  
 369 customer service requirements applied to other cable operators in the franchise area, and (iii) be  
 370 reasonably tailored to achieve appropriate customer service goals based on the technology used by the  
 371 cable operator to provide cable service;

372 5. Adopt procedures by which it will enforce the provisions of this article and the applicable  
 373 mandatory requirements of 47 U.S.C. §§ 521-573 and the regulations promulgated thereunder. Such  
 374 procedures shall require the locality to: (i) informally discuss the matter with the cable operator in the  
 375 event that the locality believes that a cable operator has not complied with this article or the applicable  
 376 mandatory requirements of 47 U.S.C. §§ 521-573 and (ii) notify the cable operator in writing of the  
 377 exact nature of the alleged noncompliance if the discussions described in the foregoing clause (i) do not  
 378 lead to resolution of the alleged noncompliance. The cable operator shall have 15 days from receipt of  
 379 this written notice to: (a) respond to the locality, if the cable operator contests, in whole or in part, the  
 380 assertion of noncompliance; (b) cure such default; or (c) in the event that, by the nature of default, such  
 381 default cannot be cured within the 15-day period, initiate reasonable steps to remedy such default and  
 382 notify the locality of the steps being taken and the projected date that they will be completed. The  
 383 locality shall schedule a public hearing in the event that the cable operator fails to respond to the  
 384 written notice pursuant to these procedures or in the event that the alleged default is not remedied  
 385 within 30 days of the date projected above if the locality intends to continue its investigation into the  
 386 default. The locality shall provide the cable operator at least 30 business days prior written notice of  
 387 such hearing, which will specify the time, place, and purpose of such hearing, and provide the cable  
 388 operator the opportunity to be heard;

389 6. Adopt a schedule of uniform penalties or liquidated damages that it may impose upon any cable  
 390 operator with an ordinance cable franchise when the locality determines that the cable operator has  
 391 failed to materially comply with (i) customer service standards; (ii) carriage of public, educational, and  
 392 governmental channels; (iii) reporting requirements; or (iv) timely and full payment of the franchise fee  
 393 or the fee assessed for the provision of public, educational, or governmental access channels, including  
 394 institutional networks. Any penalty or liquidated damage for any of the foregoing violations shall be the  
 395 same penalty or liquidated damage already established for a cable operator in the same franchise area,  
 396 if any. In addition, a locality shall not impose any penalty or liquidated damage adopted pursuant to  
 397 this subdivision until the cable operator has been afforded a reasonable cure period between the time  
 398 the cable operator is notified of the violation and the penalty or liquidated damage is imposed. A  
 399 separate violation for purposes of this article and the ordinances passed to implement this article as it  
 400 pertains to customer service standards shall be deemed to occur whenever the locality reasonably  
 401 determines that a separate customer service standard violation has occurred on one day; however, the  
 402 cable operator shall not be charged with multiple violations for a single act or event affecting one or  
 403 more subscribers on the same day. The locality may charge interest at the legal rate as set forth in  
 404 § 6.1-330.53 for any amounts due the locality by the cable operator in clause (iv) of this subdivision  
 405 that remain unpaid and undisputed;

406 7. Adopt procedures under which the locality may inspect and audit, upon 30 days prior written  
 407 notice, the books and records of the cable operator and recompute any amounts determined to be  
 408 payable under the ordinances adopted pursuant to this article. The procedures adopted by the locality  
 409 shall not exceed the following requirements: (i) the locality may require the cable operator to make  
 410 available to the locality all records reasonably necessary to confirm the accurate payment of fees; (ii)  
 411 the locality may require the cable operator to bear the locality's reasonable out-of-pocket audit expenses  
 412 if the audit discloses an underpayment of more than 3% of any quarterly payment, but not less than  
 413 \$5,000; (iii) the locality may require the cable operator to pay any additional undisputed amounts due  
 414 to the locality as a result of the audit within 30 days following written notice by the locality to the cable  
 415 operator; (iv) in the event the cable operator disputes any underpayment discovered as the result of an  
 416 audit conducted by the locality, the locality shall work together with the cable operator in good faith to  
 417 promptly resolve such dispute; (v) the locality shall provide that the cable operator and the locality  
 418 maintain all rights and remedies available at law regarding any disputed amounts; (vi) the locality shall  
 419 have no more than three years from the time the cable operator delivers a payment to provide a written,  
 420 detailed objection to or dispute of that payment, and if the locality fails to object to or dispute the  
 421 payment within that time period, the locality shall be barred from objecting to or disputing it after that  
 422 time period; and (vii) the locality shall not audit a cable operator more frequently than every 24  
 423 months;

424 8. Adopt reasonable reporting requirements for annual financial information and quarterly customer  
425 service information that must be provided by a cable operator to the locality so long as such  
426 information does not exceed the reporting requirements for any existing cable operator in that locality;

427 9. Require cable operators to provide, without charge, within the area actually served by the cable  
428 operator, one cable service outlet activated for basic cable service to each fire station, public school,  
429 police station, public library, and any other local government building. The ordinance shall apply  
430 equally to all providers of cable services in the locality, but shall not apply in cases where it is not  
431 technically feasible for a cable operator to comply;

432 10. Subject to § 15.2-2108.24, adopt requirements and procedures for (i) the management of the  
433 public rights-of-way that do not exceed the standards set forth in clauses (i) and (ii) of subsection C of  
434 § 56-462 and (ii) the construction of a cable system in the public rights-of-way;

435 11. Adopt the following allocation procedure if cable services subject to a franchise fee, or any other  
436 fee determined by a percentage of the cable operator's gross revenues in a locality, are provided to  
437 subscribers in conjunction with other services: the fee shall be applied only to the value of these cable  
438 services, as reflected on the books and records of the cable operator in accordance with rules,  
439 regulations, standards, or orders of the Federal Communications Commission or the State Corporation  
440 Commission, or generally accepted accounting principles. Any discounts resulting from purchasing the  
441 services as a bundle shall be reasonably allocated between the respective services that constitute the  
442 bundled transaction; and

443 12. Require cable operators to make cable service available to (i) up to all of the occupied  
444 residential dwelling units in the initial service area selected by cable operator within no less than three  
445 years of the date of the grant of the franchise and (ii) no more than 65% of the residential dwelling  
446 units in the area in the locality in which the cable operator has its telephone facilities, within no less  
447 than seven years of the date of the grant of the franchise. Notwithstanding the foregoing provision, a  
448 cable operator shall not be required to make cable service available: (a) for periods of force majeure;  
449 (b) for periods of delay caused by the locality; (c) for periods of delay resulting from the cable  
450 operator's inability to obtain authority to access rights-of-way in the service area; (d) in areas where  
451 developments or buildings are subject to claimed exclusive arrangements; (e) in developments or  
452 buildings that the cable operator cannot access under industry standard terms and conditions after good  
453 faith negotiation; (f) in developments or buildings that the cable operator is unable to provide cable  
454 service for technical reasons or that require facilities that are not available or cannot be deployed on a  
455 commercially reasonable basis; (g) in areas where it is not technically feasible to provide cable service  
456 due to the technology used by the cable operator to provide cable service; (h) in areas where the  
457 average occupied residential household density is less than 30 occupied residential dwelling units per  
458 mile as measured in strand footage from the nearest technically feasible point on the cable operator's  
459 active cable system (or such higher average density number as may be contained in an existing cable  
460 operator's cable franchise); and (i) when the cable operator's prior service, payment, or theft of service  
461 history with a subscriber or potential subscriber has been unfavorable. Should, through new  
462 construction, an area within the cable operator's service area meet the density requirement, a cable  
463 operator shall, subject to the exclusions in this subdivision, provide cable service to such area within six  
464 months of receiving notice from the locality that the density requirements have been met. A locality may  
465 not require a cable operator using its telephone facilities to provide cable service to provide any cable  
466 service outside of the area in the locality in which the cable operator has its telephone facilities. During  
467 the 12-month period commencing after the seventh-year anniversary date of the grant of the franchise, a  
468 locality may, by ordinance adopted after a public hearing in which the locality specifically finds that  
469 such a requirement is necessary to promote competition in cable services within the locality, require the  
470 cable operator to make service available to no more 80% of the residential dwelling units in the area in  
471 the locality in which the cable operator has its telephone facilities within no less than 10 years of the  
472 date of the grant of the franchise, subject to the exclusions in clauses (a) through (i) of this subdivision.  
473 If the cable operator notifies the locality that it is unwilling to accept this additional service availability  
474 requirement, the locality may, after notice and public hearing, terminate the cable operator's ordinance  
475 cable franchise. The cable operator shall file a certificate at its third and seventh, and if applicable,  
476 tenth, anniversary dates certifying its compliance with the foregoing service requirements. For purposes  
477 of an ordinance cable franchise, the date of the grant of the franchise shall be the date the notice  
478 required by § 15.2-2108.21 is filed with the locality. For purposes of a negotiated cable franchise, the  
479 date of the grant of the franchise shall be the date the respective locality has granted a negotiated cable  
480 franchise pursuant to § 15.2-2108.20.

481 § 15.2-2108.23. Regulation of rights-of-way; fees.

482 A. To the extent that a franchised cable operator has been authorized to use the public rights-of-way  
483 in a locality and is obligated to pay a franchise fee to such locality, such cable operator shall not be  
484 subject to any occupancy, use, or similar fee, with respect to its use of such rights-of-way, by the

485 locality or the Commonwealth Transportation Board except to the extent that such cable operator is  
 486 also a certificated provider of telecommunications services and subject to the public rights-of-way use  
 487 fee under § 56-468.1. The Commonwealth Transportation Board may charge, on a nondiscriminatory  
 488 basis, fees to recover the approximate actual cost incurred for the issuance of a permit to perform work  
 489 within the rights-of-way and for inspections to ensure compliance with the conditions of the permit, as  
 490 such fees shall be established by regulations adopted under the Administrative Process Act (§ 2.2-4000  
 491 et seq.); however, such fees may not apply to certificated providers of telecommunications services  
 492 except to the extent permitted under §§ 56-458, 56-462, and 56-468.1.

493 B. A locality may charge, on a nondiscriminatory basis, fees to recover the approximate actual cost  
 494 incurred for the issuance of a permit to perform work within the rights-of-way and for inspections to  
 495 ensure compliance with the conditions of the permit, as such fees existed on February 1, 1997, or as  
 496 subsequently modified by ordinance; however, such fees may not apply to certificated providers of  
 497 telecommunications services except to the extent permitted under §§ 56-458, 56-462, and 56-468.1. The  
 498 limitation as to fees charged for the use of the public rights-of-way shall not be applicable to pole  
 499 attachments and conduit occupancy agreements between a franchised cable operator and a locality or  
 500 its authority or commission, which permits such operator to use the public poles or conduits.

501 C. Except as provided in §§ 56-458, 56-462, and 56-468.1 and in any rules adopted by the  
 502 Commonwealth Transportation Board under § 33.1-12, the cable franchise granted hereunder supersedes  
 503 and replaces any and all other requirements and fees in local laws and the laws of the Commonwealth  
 504 relating to the use of the public rights-of-way by a cable system or other facilities for the provision of  
 505 cable service, whether such other authorizations are designated as franchises, permits, consents,  
 506 ordinances, or otherwise. No cable operator that is (i) a certificated provider of telecommunications  
 507 services that has previous consent to use the public rights-of-way in a locality through a franchise or  
 508 (ii) a certificated provider of telecommunications services that lacked prior consent to provide cable  
 509 service in a locality but provided telecommunications service over facilities leased from an entity having  
 510 previous consent to use the public rights-of-way in such locality through a franchise and granted a  
 511 franchise and paying fees pursuant to this section shall be required, in order to develop or operate a  
 512 cable system or other facilities to provide video services, to (a) obtain consent in accordance with  
 513 §§ 15.2-2015 through 15.2-2017, 56-458 or 56-462, except for permits or other permission to open  
 514 streets and roads, or (b) submit bids, bonds or applications in accordance with §§ 15.2-2100 through  
 515 15.2-2105, except for reasonable performance bonds or letters of credit not in excess of \$50,000. The  
 516 restrictions in §§ 15.2-2015 through 15.2-2018, 15.2-2100 through 15.2-2105, 15.2-2106 and 15.2-2107,  
 517 including but not limited to the advertisement and receipt of bids for franchises, shall not apply to a  
 518 cable system or other facilities used to provide cable services by cable operator that is a certificated  
 519 provider of telecommunications services with previous consent to use the public rights-of-way in a  
 520 locality through a franchise, including the provision of telecommunications services over facilities leased  
 521 from an entity with previous consent to use the public rights-of-way in a locality through a franchise,  
 522 but without previous consent to provide cable service in that locality.

523 § 15.2-2108.24. Regulation of facility construction or rights-of-way management requirements for  
 524 certain cable operators.

525 A locality shall not impose through a franchise to provide cable service, whether by negotiation or  
 526 by ordinance, any facility construction or rights-of-way management requirements on a cable operator  
 527 that is (i) a certificated provider of telecommunications services that has a franchise to use the public  
 528 rights-of-way in a locality or (ii) a certificated provider of telecommunications services that lacked prior  
 529 consent to provide cable service in a locality but provided telecommunications services over facilities  
 530 leased from an entity having a franchise to use of the public rights-of-way in such locality, except that a  
 531 municipality must meet the requirements of Article 1.1 (§ 15.2-2108.2 et seq.) of this chapter or  
 532 otherwise be authorized to provide cable service.

533 § 15.2-2108.25. Itemization.

534 A cable operator providing cable service may identify as a separate line item on each regular bill of  
 535 each subscriber (i) the amount of the total bill assessed as a franchise fee, or any equivalent fee, and  
 536 the locality to which such fee is paid; (ii) the amount of the total bill assessed to satisfy any  
 537 requirements imposed on the cable operator, including those to support public, educational, or  
 538 governmental access facilities, including institutional networks; and (iii) the amount of any other fee,  
 539 tax, assessment, or charge of any kind imposed by any governmental entity on the transaction between  
 540 the cable operator and the subscriber.

541 § 15.2-2108.26. Reciprocity.

542 Upon the request by an existing cable operator in the locality, a locality that has negotiated and  
 543 granted a cable franchise to a new cable provider through negotiation, whether before or after July 1,  
 544 2006, shall make available to that existing cable operator the applicable terms and conditions that such  
 545 locality provides to a new cable operator, by an amendment and restatement in lieu of its existing

546 franchise document. In addition, upon the request by an existing cable operator in the locality, a  
 547 locality adopting an ordinance under this article shall make available to that existing cable operator the  
 548 applicable terms and conditions from any such ordinance by opting into an ordinance cable franchise.  
 549 In either such event, the existing cable operator may accept all applicable terms and conditions only in  
 550 their entirety and in lieu of its existing franchise document and without the ability to accept specific  
 551 terms and conditions. The locality and the existing cable operator shall amend the cable franchise of the  
 552 existing cable operator to substitute the new, applicable terms and conditions upon notice of acceptance  
 553 from the existing cable operator. An existing cable provider in a locality shall have an enforceable right  
 554 to require that its cable franchise be amended and restated within 90 days of its request to substitute  
 555 the new, applicable terms and conditions of the new negotiated franchise or new ordinance cable  
 556 franchise granted to a new cable franchisee. Notwithstanding any other provision in this article, (i) no  
 557 existing cable operator shall reduce the geographic area in which it actually provides cable service as  
 558 of July 1, 2006, by the exercise of its rights under this article, but its service obligations within such  
 559 service areas shall be subject to the service exclusions set forth in clauses (a) through (i) of subdivision  
 560 12 of § 15.2-2108.22 and (ii) the provisions of this section shall not alter the time period remaining in  
 561 any unexpired, existing franchise.

562 § 15.2-2108.27. Modification.

563 No locality, without the consent of the franchisee, shall accelerate the term of, require the  
 564 renegotiation of, or otherwise modify in any way, an agreement with any entity or a franchise,  
 565 ordinance, permit, consent, or other authorization for such entity to use the public rights-of-way because  
 566 such entity has been granted a cable franchise under this article to use the public rights-of-way for the  
 567 development and operation of a cable system.

568 § 15.2-2108.28. Transfer.

569 No transfer of any franchise granted under this article shall occur without the prior consent of the  
 570 locality, provided that such locality shall not unreasonably withhold, delay, or condition such consent.  
 571 No transfer shall be made to a person, group of persons or affiliate that is not legally, technically, and  
 572 financially qualified to operate the cable system and satisfy the franchise obligations.

573 § 15.2-2108.29. Surrender.

574 Notwithstanding the provisions of this article, a new cable franchisee that considers, within three  
 575 years after the grant of a cable franchise under this article, that its provision of cable services within  
 576 the locality is no longer economically feasible may notify the locality and surrender its cable franchise  
 577 for the entire locality without liability to such locality. If a new cable franchisee surrenders its cable  
 578 service franchise, it shall not be eligible to obtain a new cable service franchise within such locality  
 579 until after the normal expiration date of the franchise that such franchisee surrendered. Such surrender  
 580 of a cable franchise shall have no impact on other franchises held by the new cable franchisee or  
 581 noncable services offered by the new cable franchisee.

582 § 15.2-2108.30. Renewal.

583 A cable operator electing to renew its cable franchise shall do so (i) pursuant to the renewal  
 584 procedures in 47 U.S.C. § 546 or (ii) by providing notice to the locality that it will opt into an  
 585 ordinance cable franchise pursuant to this article. A cable operator may file such notification that its  
 586 cable franchise will be renewed by an ordinance cable franchise not more than one year in advance of  
 587 the expiration date of the existing franchise or by a renewal certification filed within 90 days after the  
 588 effective date of this act in the case of a current cable franchise whose original, renewal, or extension  
 589 term has expired. Except as provided by federal law, the restrictions in §§ 15.2-2015 through 15.2-2018,  
 590 15.2-2100 through 15.2-2105, 15.2-2106 and 15.2-2107, including, but not limited to, the advertisement  
 591 and receipt of bids for cable franchises, shall not apply to renewal certifications except where a renewal  
 592 would result in a city or town having granted a cable franchise and a renewal with combined terms in  
 593 excess of 40 years.

594 § 15.2-2108.31. Article construed.

595 The fact that any person obtains a negotiated franchise or ordinance cable franchise to provide  
 596 cable services under this article shall not create any presumption that such person is providing cable  
 597 services, is controlling or responsible for the management and operation of a cable system, or is a cable  
 598 operator, for purposes of federal law.

599 § 15.2-2160. Provision of telecommunications services.

600 A. Any locality that operates an electric distribution system may provide telecommunications  
 601 services, including local exchange telephone service as defined in § 56-1, within or outside its  
 602 boundaries if the locality obtains a certificate pursuant to § 56-265.4:4. Such locality may provide  
 603 telecommunications services within any locality in which it has electric distribution system facilities as  
 604 of March 1, 2002. Any locality providing telecommunications services on March 1, 2002, may provide  
 605 such telecommunications, Internet access, broadband, information, and data transmission services  
 606 within any locality within 75 miles of the geographic boundaries of its electric distribution system as

607 such system existed on March 1, 2002.

608 B. A locality that has obtained a certificate pursuant to § 56-265.4:4 shall (i) comply with all  
609 applicable laws and regulations for the provision of telecommunications services; (ii) make a reasonable  
610 estimate of the amount of all federal, state, and local taxes (including income taxes and consumer utility  
611 taxes) that would be required to be paid or collected for each fiscal year if the locality were a for-profit  
612 provider of telecommunications services, (iii) prepare reasonable estimates of the amount of any  
613 franchise fees and other state and local fees (including permit fees and pole rental fees), and  
614 right-of-way charges that would be incurred in each fiscal year if the locality were a for-profit provider  
615 of telecommunications services, (iv) prepare and publish annually financial statements in accordance  
616 with generally accepted accounting principles showing the results of operations of its provision of  
617 telecommunications services, and (v) maintain records demonstrating compliance with the provisions of  
618 this section that shall be made available for inspection and copying pursuant to the Virginia Freedom of  
619 Information Act (§ 2.2-3700 et seq.).

620 C. Each locality that has obtained a certificate pursuant to § 56-265.4:4 shall provide  
621 nondiscriminatory access to for-profit providers of telecommunications services on a first-come,  
622 first-served basis to rights-of-way, poles, conduits or other permanent distribution facilities owned, leased  
623 or operated by the locality unless the facilities have insufficient capacity for such access and additional  
624 capacity cannot reasonably be added to the facilities.

625 D. The prices charged and the revenue received by a locality for providing telecommunications  
626 services shall not be cross-subsidized by other revenues of the locality or affiliated entities, except (i) in  
627 areas where no offers exist from for-profit providers of such telecommunications services, or (ii) as  
628 permitted by the provisions of subdivision B 5 of § 56-265.4:4. *The provisions of this subsection shall*  
629 *not apply to Internet access, broadband, information, and data transmission services provided by any*  
630 *locality providing telecommunications services on March 1, 2002.*

631 E. No locality providing such services shall acquire by eminent domain the facilities or other  
632 property of any telecommunications service provider to offer cable, telephone, data transmission or other  
633 information or online programming services.

634 F. Public records of a locality that has obtained a certificate pursuant to § 56-265.4:4, which records  
635 contain confidential proprietary information or trade secrets pertaining to the provision of  
636 telecommunications service, shall be exempt from disclosure under the Freedom of Information Act  
637 (§ 2.2-3700 et seq.). As used in this subsection, a public record contains confidential proprietary  
638 information or trade secrets if its acquisition by a competing provider of telecommunications services  
639 would provide the competing provider with a competitive benefit.

640 § 56-265.4:4. Certificate to operate as a telephone utility.

641 A. The Commission may grant certificates to competing telephone companies, or any county, city or  
642 town that operates an electric distribution system, for interexchange service where it finds that such  
643 action is justified by public interest, and is in accordance with such terms, conditions, limitations, and  
644 restrictions as may be prescribed by the Commission for competitive telecommunications services. A  
645 certificate to provide interexchange services shall not authorize the holder to provide local exchange  
646 services. The Commission may grant a certificate to a carrier, or any county, city or town that operates  
647 an electric distribution system, to furnish local exchange services as provided in subsection B.

648 B. 1. After notice to all local exchange carriers certificated in the Commonwealth and other  
649 interested parties and following an opportunity for hearing, the Commission may grant certificates to any  
650 telephone company, or any county, city or town that operates an electric distribution system, proposing  
651 to furnish local exchange telephone service in the Commonwealth. In determining whether to grant a  
652 certificate under this subsection, the Commission may require that the applicant show that it possesses  
653 sufficient technical, financial, and managerial resources. Before granting any such certificate, the  
654 Commission shall: (i) consider whether such action reasonably protects the affordability of basic local  
655 exchange telephone service, as such service is defined by the Commission, and reasonably assures the  
656 continuation of quality local exchange telephone service; and (ii) find that such action will not  
657 unreasonably prejudice or disadvantage any class of telephone company customers or telephone service  
658 providers, including the new entrant and any incumbent local exchange telephone company, and is in the  
659 public interest. Except as provided in subsection A of § 15.2-2160, all local exchange certificates granted  
660 by the Commission after July 1, 2002, shall be to provide service in any territory in the Commonwealth  
661 unless the applicant specifically requests a different certificated service territory. The Commission shall  
662 amend the certificated service territory of each local exchange carrier that was previously certificated to  
663 provide service in only part of the Commonwealth to permit such carrier's provision of local exchange  
664 service throughout the Commonwealth beginning on September 1, 2002, unless that local exchange  
665 carrier notifies the Commission prior to September 1, 2002, that it elects to retain its existing certificated  
666 service territory. A local exchange carrier shall only be considered an incumbent in any certificated  
667 service territory in which it was considered an incumbent prior to July 1, 2002.

668 2. A Commission order, including appropriate findings of fact and conclusions of law, denying or  
669 approving, with or without modification, an application for certification of a new entrant shall be entered  
670 no more than 180 days from the filing of the application, except that the Commission, upon notice to all  
671 parties in interest, may extend that period in additional 30-day increments not to exceed an additional 90  
672 days in all.

673 3. The Commission shall (i) promote and seek to assure the provision of competitive services to all  
674 classes of customers throughout all geographic areas of the Commonwealth by a variety of service  
675 providers; (ii) require equity in the treatment of the certificated local exchange telephone companies so  
676 as to encourage competition based on service, quality, and price differences between alternative  
677 providers; (iii) consider the impact on competition of any government-imposed restrictions limiting the  
678 markets to be served or the services offered by any provider; (iv) determine the form of rate regulation,  
679 if any, for the local exchange services to be provided by the applicant and, upon application, the form  
680 of rate regulation for the comparable services of the incumbent local exchange telephone company  
681 provided in the geographical area to be served by the applicant; and (v) promulgate standards to assure  
682 that there is no cross-subsidization of the applicant's competitive local exchange telephone services by  
683 any other of its services over which it has a monopoly, whether or not those services are telephone  
684 services. The Commission shall also adopt safeguards to ensure that the prices charged and the revenue  
685 received by a county, city or town for providing telecommunications services shall not be  
686 cross-subsidized from other revenues of the county, city or town or affiliated entities, except (i) in areas  
687 where no offers exist from for-profit providers of such telecommunications services, or (ii) as authorized  
688 pursuant to subdivision 5 of this subsection.

689 4. The Commission shall discharge the responsibilities of state commissions as set forth in the federal  
690 Telecommunications Act of 1996 (P.L. 104-104) (the Act) and applicable law and regulations, including,  
691 but not limited to, the arbitration of interconnection agreements between local exchange carriers;  
692 however, the Commission may exercise its discretion to defer selected issues under the Act. If the  
693 Commission incurs additional costs in arbitrating such agreements or resolving related legal actions or  
694 disputes that cannot be recovered through the maximum levy authorized pursuant to § 58.1-2660, that  
695 levy shall be increased above the levy authorized by that section to the extent necessary to recover such  
696 additional costs.

697 5. Upon the Commission's granting of a certificate to a county, city or town under this section, such  
698 county, city, or town (i) shall be subject to regulation by the Commission for intrastate  
699 telecommunications services, (ii) shall have the same duties and obligations as other certificated  
700 providers of telecommunications services, (iii) shall separately account for the revenues, expenses,  
701 property, and source of investment dollars associated with the provision of such services, and (iv) to  
702 ensure that there is no unreasonable advantage gained from a government agency's taxing authority and  
703 control of government-owned land, shall charge an amount for such services that (a) does not include  
704 any subsidies, unless approved by the Commission, and (b) takes into account, by imputation or  
705 allocation, equivalent charges for all taxes, pole rentals, rights of way, licenses, and similar costs  
706 incurred by for-profit providers. Each certificated county, city, or town that provides telecommunications  
707 services regulated by the Commission shall file an annual report with the Commission demonstrating  
708 that the requirements of clauses (iii) and (iv) of this subdivision have been met. The Commission may  
709 approve a subsidy under this section if deemed to be in the public interest and provided that such  
710 subsidy does not result in a price for the service lower than the price for the same service charged by  
711 the incumbent provider in the area.

712 6. A locality that has obtained a certificate pursuant to this section shall (i) comply with all  
713 applicable laws and regulations for the provision of telecommunications services; (ii) make a reasonable  
714 estimate of the amount of all federal, state, and local taxes (including income taxes and consumer utility  
715 taxes) that would be required to be paid or collected for each fiscal year if the locality were a for-profit  
716 provider of telecommunications services, (iii) prepare reasonable estimates of the amount of any  
717 franchise fees and other state and local fees (including permit fees and pole rental fees), and  
718 right-of-way charges that would be incurred in each fiscal year if the locality were a for-profit provider  
719 of telecommunications services, (iv) prepare and publish annually financial statements in accordance  
720 with generally accepted accounting principles showing the results of operations of its provision of  
721 telecommunications services, and (v) maintain records demonstrating compliance with the provisions of  
722 this section that shall be made available for inspection and copying pursuant to the Virginia Freedom of  
723 Information Act (§ 2.2-3700 et seq.).

724 7. Each locality that has obtained a certificate pursuant to this section shall provide nondiscriminatory  
725 access to for-profit providers of telecommunications services on a first-come, first-served basis to  
726 rights-of-way, poles, conduits or other permanent distribution facilities owned, leased or operated by the  
727 locality unless the facilities have insufficient capacity for such access and additional capacity cannot  
728 reasonably be added to the facilities.

729 8. The prices charged and the revenue received by a locality for providing telecommunications  
 730 services shall not be cross-subsidized by other revenues of the locality or affiliated entities, except (i) in  
 731 areas where no offers exist from for-profit providers of such telecommunications services, or (ii) as  
 732 permitted by the provisions of subdivision B 5. *The provisions of this subdivision shall not apply to*  
 733 *Internet access, broadband, information, and data transmission services provided by any locality*  
 734 *providing telecommunications services on March 1, 2002.*

735 9. The Commission shall promulgate rules necessary to implement this section. In no event, however,  
 736 shall the rules necessary to implement subdivisions B 5 iii and iv, B 6 ii through v, and B 8 impose any  
 737 obligations on a locality that has obtained a certificate pursuant to this section, but is not yet providing  
 738 telecommunications services regulated by the Commission.

739 10. Public records of a locality that has obtained a certificate pursuant to this section, which records  
 740 contain confidential proprietary information or trade secrets pertaining to the provision of  
 741 telecommunications service, shall be exempt from disclosure under the Freedom of Information Act  
 742 (§ 2.2-3700 et seq.). As used in this subdivision, a public record contains confidential proprietary  
 743 information or trade secrets if its acquisition by a competing provider of telecommunications services  
 744 would provide the competing provider with a competitive benefit.

745 C. Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of this title shall not apply to a county, city or  
 746 town that has obtained a certificate pursuant to this section.

747 D. Any county, city, or town that has obtained a certificate pursuant to this section may construct,  
 748 own, maintain, and operate a fiber optic or communications infrastructure to provide consumers with  
 749 Internet services, data transmission services, and any other communications service that its infrastructure  
 750 is capable of delivering; provided, however, nothing in this subsection shall authorize the provision of  
 751 cable television services or other multi-channel video programming service. Furthermore, nothing in this  
 752 subsection shall alter the authority of the Commission.

753 E. Any county, city, or town that has obtained a certificate pursuant to this section and that had  
 754 installed a cable television headend prior to December 31, 2002, is authorized to own and operate a  
 755 cable television system or other multi-channel video programming service and shall be exempt from the  
 756 provisions of §§ 15.2-2108.4 through 15.2-2108.8. Nothing in this subsection shall authorize the  
 757 Commission to regulate cable television service.

758 § 56-466.1. Pole attachments; cable television systems and telecommunications service providers.

759 A. As used in this section:

760 "Cable television system" means any system licensed, franchised or certificated pursuant to  
 761 ~~§ 15.2-2108~~ *Article 1.2 (§ 15.2-2108.19 et seq.) of Chapter 21 of Title 15.2 of the Code of Virginia*, that  
 762 transmits television signals, for distribution to subscribers of its services for a fee, by means of wires or  
 763 cables connecting its distribution facilities with its subscriber's television receiver or other equipment  
 764 connecting to the subscriber's television receiver, and not by transmission of television signals through  
 765 the air.

766 "Pole attachment" means any attachment by a cable television system or provider of  
 767 telecommunications service to a pole, duct, conduit, right-of-way or similar facility owned or controlled  
 768 by a public utility.

769 "Public utility" has the same meaning ascribed thereto in § 56-232.

770 "Rearrangement" means work performed at the request of a telecommunications service provider or  
 771 cable television system to, on or in an existing pole, duct, conduit, right-of-way or similar facility owned  
 772 or controlled by a public utility that is necessary to make such pole, duct, conduit, right-of-way, or  
 773 similar facility usable for a pole attachment. "Rearrangement" shall include replacement, at the request  
 774 of a telecommunications service provider or cable television system, of the existing pole, duct, conduit,  
 775 right-of-way, or similar facility if the existing pole, duct, conduit, right-of-way, or similar facility does  
 776 not contain adequate surplus space or excess capacity and cannot be rearranged so as to create the  
 777 adequate surplus space or excess capacity required for a pole attachment.

778 "Telecommunications service provider" means any public service corporation or public service  
 779 company that holds a certificate of public convenience and necessity to furnish local exchange telephone  
 780 service or interexchange telephone service.

781 B. Upon request by a telecommunications service provider or cable television system to a public  
 782 utility, both the public utility and the telecommunications service provider or cable television system  
 783 shall negotiate in good faith to arrive at a mutually agreeable contract for attachments to the public  
 784 utility's poles by the telecommunications service provider or cable television system.

785 C. After entering into a contract for attachments to its poles by any telecommunications service  
 786 provider or cable television system, a public utility shall permit, upon reasonable terms and conditions  
 787 and the payment of reasonable annual charges and the cost of any required rearrangement, the  
 788 attachment of any wire, cable, facility or apparatus to its poles or pedestals, or the placement of any  
 789 wire, cable, facility or apparatus in conduit or duct space owned or controlled by it, by such

790 telecommunications service provider or cable television system that is authorized by law, to construct  
791 and maintain the attachment, provided that the attachment does not interfere, obstruct or delay the  
792 service and operation of the public utility or create a safety hazard.

793 D. Notwithstanding the provisions of subsection C, a public utility providing electric utility service  
794 may deny access by a telecommunications service provider or cable television system to any pole, duct,  
795 conduit, right-of-way, or similar facility owned or controlled, in whole or in part, by such public utility,  
796 provided such denial is made on a nondiscriminatory basis on grounds of insufficient capacity or reasons  
797 of safety, reliability, or generally applicable engineering principles.

798 E. This section shall not apply to any pole attachments regulated pursuant to 47 U.S.C. § 224.

799 § 56-502. Regulation by State Corporation Commission.

800 Every cooperative organized under this chapter shall be subject to the jurisdiction of the State  
801 Corporation Commission with respect to telephone services and facilities in the same manner and to the  
802 same extent as are other similar utilities under the laws of Virginia, except that (i) the Commission shall  
803 have no jurisdiction over the rates, service quality and types of service offerings of the cooperative to its  
804 members; (ii) a cooperative shall not be required to file a local service tariff with the Commission; and  
805 (iii) where a cooperative establishes a cable television system, it shall be subject to ~~§ 15.2-2108~~ *Article*  
806 *1.2 (§ 15.2-2108.19 et seq.) of Chapter 21 of Title 15.2 of the Code of Virginia.*

807 **2. That § 15.2-2108 of the Code of Virginia is repealed.**

808 **3. That in any locality in which the governing body of the locality has granted one or more new**  
809 **cable franchises during the 12-month period prior to July 1, 2006, that include an overlapping**  
810 **geographic service area with another cable franchise within that locality, all franchises within that**  
811 **locality shall remain in full force and effect until the earliest expiration date of the overlapping**  
812 **franchises or until one is terminated pursuant to the terms of the franchise and shall not be**  
813 **subject to the provisions of Article 1.2 (§ 15.2-2108.19 et seq.) of Chapter 21 of Title 15.2 of the**  
814 **Code of Virginia, except as set forth in this clause. A locality that has granted one or more new,**  
815 **overlapping franchises within the 12-month period prior to July 1, 2006, shall have the option not**  
816 **to offer, accept, or implement the ordinance cable franchise process described in § 15.2-2108.22 of**  
817 **the Code of Virginia until the earliest expiration date of the overlapping franchises, but may**  
818 **determine only to grant new cable franchises during such period through the negotiated cable**  
819 **franchise process. Any such locality, when granting any additional cable franchises after July 1,**  
820 **2006, and until the existing cable franchises expire or are terminated pursuant to their terms, shall**  
821 **make the terms of any such newly granted franchise available, pursuant to § 15.2-2108.26 of the**  
822 **Code of Virginia, to all cable operators with existing franchises. Any locality in which the**  
823 **governing body of the locality has granted one or more new cable franchises during the 12-month**  
824 **period prior to July 1, 2006, that include an overlapping geographic service area with another**  
825 **cable franchise within that locality, shall make the terms of any such newly granted franchise**  
826 **available, in the manner described in § 15.2-2108.26, to all cable operators with existing franchises**  
827 **on the date the subsequent overlapping franchise was awarded. Upon the expiration of a current**  
828 **cable franchise that is subject to this clause, this clause shall no longer be applicable to any cable**  
829 **franchise in such locality and the locality shall thereafter be subject to all provisions of Article 1.2**  
830 **(§ 15.2-2108.19 et seq.) of Chapter 21 of Title 15.2 of the Code of Virginia.**